IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5795 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAFIK KADARBHAI KOTHARI @ RAFIK MEMON

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 5795 of 2002

MR NM KAPADIA for Petitioner No. 1

MR AD OZA GP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 22/10/2002

ORAL JUDGEMENT

The present petition has been filed by the father of the detenue, who has been detained under the provisions of Gujarat Prevention of Anti-Social

Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by order dated 7/4/2002 passed by the Police Commissioner, Surat City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the detaining authority has passed the detention order relying upon the solitary offence registered before the Athwaline Police Station vide CR No.III-149 of 2002. The said offence is registered on 29/3/2002 and relying upon the same, the detaining authority has passed the impugned order of detention on 7/4/2002. The learned advocate for the petitioner has further submitted that the detenue made representation to the concerned authority on 13/6/2002 which has been rejected by the authority on 15/6/2002 and the detenu has been informed accordingly and the detenu received the said communication through jail on 1/8/2002 and therefore, according to the learned advocate for the detenu there is a delay in deciding the representation and communicating the decision of the representation, which is unconstitutional. Learned advocate for the detenu tenders the communication received by the detenu through jail. The same is ordered to be taken on record. In support of his say, the learned advocate for the petitioner has placed reliance upon the decision of the Hon'ble Supreme Court reported in AIR 1981 SC 1126, in which the Honourable Supreme Court has held as under :-

> "We would emphasise that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This not having been done in the present case we have no option but to declare the detention unconstitutional. We order accordingly, allow the appeal and direct that the appellant be set at liberty forthwith."

4. Since the detaining authority has not decided the representation of the petitioner and not communicated the decision of the representation of the petitioner promptly, in view of the above judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

5. In view of the above, the petition is allowed. The order of detention dated 7/4/2002 passed against the detenu is hereby quashed and set aside. The detenu namely Rafik Kadarbhai Kothari @ Rafik Memon is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

Rafik